

Message Text

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P 271532Z FEB 76

FM AMEMBASSY LISBON

TO SECSTATE WASHDC PRIORITY 6155

UNCLAS SECTION 1 OF 3 LISBON 1279

E.O. 11652: N/A

TAGS: PINT, PO

SUBJ: AFM-PARTIES PACT -- TRANSLATION

REF: LISBON 1268 (DTG 271232Z FEB 76)

1. AN INFORMAL EMBASSY TRANSLATION OF THE REVISED ARMED FORCES
MOVEMENT - POLITICAL PARTIES CONSTITUTIONAL PACT, SIGNED
FEB 26, FOLLOWS:

-- 1. SOVEREIGN ORGANS:

THE SOVEREIGN ORGANS DURING THE PERIOD OF TRANSITION WILL
BE THE FOLLOWING:

- (A) PRESIDENT OF THE REPUBLIC;
- (B) COUNCIL OF REVOLUTION (RC);
- (C) LEGISLATIVE ASSEMBLY;
- (D) GOVERNMENT;
- (E) COURTS.

-- 2. PRESIDENT OF THE REPUBLIC:

(2.1) THE PRESIDENT WILL BE ELECTED BY UNIVERSAL, DIRECT,
AND SECRET SUFFRAGE. CANDIDACIES FOR PRESIDENT OF THE REPUBLIC
WILL BE PRESENTED BY A MINIMUM OF 7,500 AND A MAXIMUM OF 15,000
QUALIFIED VOTERS.

(2.2) THE PRESIDENT SHALL BE EX-OFFICIO PRESIDENT OF THE
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REVOLUTIONARY COUNCIL AND SUPREME COMMANDER OF THE ARMED FORCES.

(2.3) THE PRESIDENT SHALL HAVE SUCH POWERS AND RESPONSIBILITIES AS ARE DELEGATED HIM BY THE CONSTITUTION, INCLUDING THE FOLLOWING:

- (A) TO PRESIDE OVER THE RC;
- (B) TO EXERCISE THE RESPONSIBILITY OF SUPREME COMMANDER OF THE ARMED FORCES;
- (C) TO DECLARE WAR AND MAKE PEACE, IN ACCORDANCE WITH THE TERMS OF THE CONSTITUTION AND WITH THE AUTHORIZATION OF THE RC;
- (D) TO DECLARE A STATE OF SEIGE OR OF EMERGENCY, WITH THE AUTHORIZATION OF THE RC AND UNDER THE TERMS OF THE CONSTITUTION, IN ALL OR IN ANY PART OF THE NATIONAL TERRITORY;
- (E) TO NAME AND DISMISS THE PRIME MINISTER AFTER CONSULTING THE RC AND THE POLITICAL PARTIES REPRESENTED IN THE NATIONAL ASSEMBLY, AND AFTER TAKING INTO ACCOUNT THE ELECTORAL RESULTS;
- (F) TO NAME AND DISMISS MEMBERS OF THE GOVERNMENT UPON THE RECOMMENDATION OF THE PRIME MINISTER;
- (G) TO PROMULGATE AND ORDER PUBLISHED LAWS OF THE LEGISLATIVE ASSEMBLY, DECREE-LAWS, AND REGULATORY DECREES, AS WELL AS LEGISLATIVE ACTIONS AND SIMPLE ACTIONS OF THE RC, AND TO SIGN ALL OTHER DECREES;
- (H) TO DISSOLVE THE LEGISLATIVE ASSEMBLY, SETTING A DATE FOR NEW ELECTIONS WITHIN NOT MORE THAN 90 DAYS;
- (I) TO DISSOLVE THE ORGANS OF THE AUTONOMOUS REGIONS AFTER CONSULTING THE RC.

(2.4) A STATE OF SEIGE OR OF EMERGENCY MAY NOT BE PROLONGED BEYOND THIRTY DAYS WITHOUT THE RATIFICATION OF THE LEGISLATIVE ASSEMBLY.

(2.5.1) WITHIN THIRTY DAYS FROM THE DATE HE RECEIVED FROM THE LEGISLATIVE ASSEMBLY A BILL TO BE PROMULGATED AS LAW, OR, UPON EXPIRATION OF THE PERIOD PROVIDED FOR IN SEC. 3.8.3, IF THE RC HAS NOT RETURNED A FINDING OF UNCONSTITUTIONALITY, THE PRESIDENT MAY, AFTER CONSULTING THE RC, EXERCISE THE RIGHT OF VETO, REQUESTING A REVIEW OF THE BILL.

(2.5.2) IF THE LEGISLATIVE ASSEMBLY OVERRIDES THE VETO BY AN ABSOLUTE MAJORITY OF ACTIVE DEPUTIES, PROMULGATION MAY NOT BE REFUSED. HOWEVER, A MAJORITY OF TWO-THIRDS OF THOSE DEPUTIES ACTUALLY PRESENT WILL BE REQUIRED TO OVERRIDE A VETO OF BILLS
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DEALING WITH THE FOLLOWING MATTERS:

- (A) LIMITS OF STATE, PRIVATE, AND COLLECTIVE PROPERTY;
- (B) FOREIGN AFFAIRS;
- (C) ORGANIZATION OF NATIONAL DEFENSE AND THE DEFINITION OF ITS DUTIES;
- (D) REGULATION OF ELECTORAL ACTIVITIES PROVIDED FOR IN THE CONSTITUTION.

(2.6) THE EXERCISE OF THE PRESIDENT'S POWER TO DISSOLVE THE LEGISLATIVE ASSEMBLY IS DEPENDENT UPON A FAVORABLE RECOMMENDATION OF THE RC, EXCEPT IN THOSE CASES PROVIDED FOR IN SEC. 4.4.

(2.7) IN THE CASE OF A VACANCE IN THE OFFICE OF PRESIDENT, THE PRESIDENT OF THE LEGISLATIVE ASSEMBLY WILL ASSUME HIS FUNCTIONS, WITH NEW ELECTIONS WITHIN 60 DAYS.

(2.8) IF THE PRESIDENT RESIGNS WITHIN THIRTY DAYS FOLLOWING LEGISLATIVE ELECTIONS RESULTING FROM THE DISSOLUTION OF THE ASSEMBLY, HE MAY NOT BE A CANDIDATE IN THE ELECTIONS IMMEDIATELY FOLLOWING.

-- (3) REVOLUTIONARY COUNCIL:

(3.1) THE REVOLUTIONARY COUNCIL WILL BE COMPOSED OF:

(A) THE PRESIDENT OF THE REPUBLIC, WHO WILL PRESIDE;

(B) THE CHIEF OF THE ARMED FORCES GENERAL STAFF, THE VICE-CHIEF OF THE ARMED FORCES GENERAL STAFF (IF ANY), THE CHIEFS OF STAFF OF THE ARMY, AIR FORCE, AND NAVY, AND THE PRIME MINISTER (IF HE IS MILITARY);

(C) FOURTEEN OFFICERS, EIGHT BEING FROM THE ARMY, THREE FROM THE AIR FORCE, AND THREE FROM THE NAVY, WHO WILL BE DESIGNATED BY THEIR RESPECTIVE SERVICES.

(3.2) IN THE CASE OF THE DEATH, RESIGNATION, OR PERMANENT IMPAIRMENT, VERIFIED BY THE RC ITSELF, OF ANY MEMBER REFERRED TO IN PART (C) OF THE PREVIOUS SECTION, HIS POSITION WILL BE FILLED BY THE APPROPRIATE SERVICE.

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(3.3) THE RC SHALL REGULATE ITS OWN ORGANIZATION AND PROCEEDINGS.

(3.4) THE RC SHALL REMAIN PERMANENTLY IN SESSION, ACCORDING TO A SCHEDULE WHICH IT SHALL DEFINE.

(3.5) THE RC SHALL FUNCTION AS A COUNCIL OF THE PRESIDENT, AS A POLITICAL AND LEGISLATIVE ORGAN IN MILITARY MATTERS, AND AS THE GUARANTOR OF LOYALTY TO THE SPIRIT OF THE PORTUGUESE REVOLUTION OF APRIL 25, 1974, FULFILLMENT OF THE CONSTITUTION, AND THE NORMAL OPERATION OF DEMOCRATIC INSTITUTIONS.

(3.6) AS A COUNCIL OF THE PRESIDENT AND AS GUARANTOR OF THE NORMAL OPERATION OF DEMOCRATIC INSTITUTIONS, THE RC SHALL ADVISE THE PRESIDENT IN THE EXERCISE OF HIS FUNCTIONS AND:

- (A) AUTHORIZE THE PRESIDENT TO DECLARE WAR AND MAKE PEACE;
- (B) AUTHORIZE THE PRESIDENT TO DECLARE A STATE OF SIEGE OR EMERGENCY IN ALL OR PART OF THE NATIONAL TERRITORY;
- (C) AUTHORIZE THE PRESIDENT'S ABSENCE FROM NATIONAL TERRITORY;
- (D) DECLARE THE PRESIDENT PERMANENTLY PHYSICALLY UNABLE TO EXERCISE HIS FUNCTIONS AND VERIFY TEMPORARY IMPAIRMENTS.

(3.7) AS GUARANTOR OF FULFILLMENT OF THE CONSTITUTION. THE RC SHALL:

- (A) RULE, AT ITS OWN INITIATIVE OR AT THE PRESIDENT'S REQUEST, ON THE CONSTITUTIONALITY OF ANY MEASURE BEFORE IT MAY BE PROMULGATED;

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- (B) ENSURE, BY TAKING WHATEVER MEASURES MAY BE NECESSARY, FULFILLMENT OF CONSTITUTIONAL PRINCIPLES. IT MAY MAKE RECOMMENDATIONS FOR THIS PURPOSE;

- (C) RULE, WITH BINDING FORCE, ON THE CONSTITUTIONALITY OF ANY MEASURES ALREADY PROMULGATED WHEN REQUESTED BY THE PRESIDENT, THE LEGISLATIVE ASSEMBLY, THE PRIME MINISTER, THE ATTORNEY GENERAL, OR THE "OMBUDSMAN", AND IN CASES PROVIDED FOR IN SECTION (3.10).

(3.8.1) IN ORDER TO ENSURE CONFORMITY WITH THE PROVISIONS OF PART (A) SECTION (3.7), ALL DECREES FORWARDED TO THE PRESIDENT FOR PROMULGATION AS LAW OR AS DECREE LAW, OR WHICH DEAL WITH THE APPROVAL OF TREATIES OR INTERNATIONAL ACCORDS, SHALL BE SIMULTANEOUSLY FORWARDED TO THE RC. SUCH MEASURES MAY NOT BE PROMULGATED UNTIL FIVE DAYS AFTER THEY HAVE BEEN RECEIVED BY THE RC, UNLESS THE PRESIDENT CONSIDERS IT A CASE OF EMERGENCY, WHEN HE SHALL INFORM THE RC OF HIS INTENTION TO IMMEDIATELY PROMULGATE THE MEASURE IN QUESTION.

(3.8.2) SHOULD THE RC DOUBT THE CONSTITUTIONALITY OF A DECREE

AND DECIDE TO RULE ON IT, IT SHALL SO ADVISE THE PRESIDENT
WITHIN FIVE DAYS AFTER RECEIVING THE DECREE, SO THAT IT SHALL
NOT BE PROMULGATED.

(3.8.3) WHEN THE RC HAS DECIDED, OR THE PRESIDENT HAS ASKED
IT, TO RULE ON THE CONSTITUTIONALITY OF A MEASURE, THE RC
SHALL HAVE A PERIOD OF TWENTY DAYS TO MAKE A DECISION. THIS
PERIOD MAY, HOWEVER, BE SHORTENED BY THE PRESIDENT.

(3.8.4) SHOULD THE RC BELIEVE ANY MEASURE TO BE UNCONSTITUTIONAL
PRIOR TO ITS PROMULGATION, THE PRESIDENT SHALL EXERCISE THE
RIGHT OF VETO PROVIDED FOR IN SECTION 2.5.1. SHOULD THE
MEASURE IN QUESTION BE A DECREE OF THE LEGISLATIVE ASSEMBLY,
A MAJORITY OF TWO-THIRDS OF THOSE DEPUTIES PRESENT WILL BE
REQUIRED TO OVERRIDE THE VETO. SHOULD THE MEASURE BE A DECREE-LAW
OF THE GOVERNMENT, IT MAY NOT BE PROMULGATED.

(3.9) SHOULD THE RC DECIDE THAT THE CONSTITUTION IS NOT
BEING FULFILLED THROUGH OMISSION OF THE NECESSARY LEGISLATIVE
MEASURES TO BRING CONSTITUTIONAL PROVISIONS INTO EFFECT,
THE RC CAN RECOMMEND TO THE LEGISLATIVE ORGANS THAT THEY ADOPT
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THESE MEASURES WITHIN A REASONABLE PERIOD.

(3.10.1) IN LAW SUITS SUBMITTED FOR JUDGMENT, THE COURTS
CANNOT APPLY PRINCIPLES WHICH INFRINGE ON THE PROVISIONS OF
THE CONSTITUTION OR ON PRINCIPLES SET FORTH THEREIN.
THE COURTS MUST TAKE INTO ACCOUNT THE POSSIBILITY OF UNCONSTITUTION-
ALITY. HOWEVER, THE ORGANIC OR FORMAL UNCONSTITUTIONALITY OF
PROVISIONS OF TREATIES OR INTERNATIONAL ACCORDS SHALL NOT
PREVENT THEIR APPLICATION IN PORTUGAL UNLESS UNCONSTITUTIONALITIES
PREVENT APPLICATION IN OTHER SIGNATORY STATES.

(3.10.2) WHENEVER THE COURTS REFUSE TO APPLY A PERMANENT
PRINCIPLE OF LAW, A DECREE-LAW, A REGULATORY DECREE, OR
A COMPARABLE MEASURE BASED ON ITS UNCONSTITUTIONALITY, AND ONCE
ORDINARY, APPROPRIATE RESOURCES HAVE BEEN EXHAUSTED, THE
ATTORNEY GENERAL WILL REFER THE MATTER TO THE CONSTITUTIONAL
COMMISSION, WHICH SHALL RETURN A FINAL DECISION IN THE CONCRETE
CASE BY RESOLVING THE QUESTION OF CONSTITUTIONALITY.

(3.10.3) THE ATTORNEY GENERAL SHALL LIKEWISE REFER TO THE
CONSTITUTIONAL COMMISSION DECISIONS WHICH APPLY PRINCIPLES
PREVIOUSLY JUDGED UNCONSTITUTIONAL BY THE COMMISSION.

(3.10.4) IF THE CONSTITUTIONAL COMMISSION SHOULD JUDGE THE
SAME PRINCIPLE UNCONSTITUTIONAL IN THREE CONCRETE CASES,
THE RC MAY MAKE A GENERAL, LEGALLY BINDING, DECLARATION OF
UNCONSTITUTIONALITY WITHOUT EFFECT ON CASES ALREADY JUDGED.

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(3.10.5) WHEN UNCONSTITUTIONALITY IS ORGANIC OR FORMAL, A JUDGMENT OF UNCONSTITUTIONALITY BY THE CONSTITUTIONAL COMMISSION SHALL SUFFICE FOR THE RC TO PROCEED WITH ITS DECLARATION OF UNCONSTITUTIONALITY.

(3.11.1.) THE CONSTITUTIONAL COMMISSION WILL BE PRESIDED OVER BY A MEMBER OF THE RC, WHO HAS A VOTE IN THE CASE OF TIES. THE CONSTITUTIONAL COMMISSION IS ALSO MADE UP OF:
(A) FOUR JUDGES, ONE DESIGNATED BY THE SUPREME COURT OF JUSTICE AND THE REST DESIGNATED BY THE SUPERIOR COUNCIL OF THE MAGISTRATURE. ONE MEMBER SHALL COME FROM THE APPEALS COURTS AND TWO FROM THE COURTS OF FIRST INSTANCE.
(B) A PERSONALITY OF RECOGNIZED MERIT DESIGNATED BY THE LEGISLATIVE ASSEMBLY.
(C) A PERSONALITY OF RECOGNIZED MERIT DESIGNATED BY THE PRESIDENT.
(D) TWO PERSONALITIES OF RECOGNIZED MERIT DESIGNATED BY THE RC, AT LEAST ONE OF WHOM IS A JURIST OF RECOGNIZED COMPETENCE.

(3.11.2) THE MEMBERS OF THE CONSTITUTIONAL COMMISSION WILL EXERCISE THEIR RESPONSIBILITIES DURING THE TRANSITION PERIOD, AND WILL BE INDEPENDENT AND IRREMOVABLE. THE RULES GOVERNING IMPARTIALITY AND IRRESPONSIBILITY OF JUDGES SHALL APPLY TO MEMBERS OF THE CONSTITUTIONAL COMMISSION WHEN THEY ARE EXERCISING THEIR JURIDICAL FUNCTION.

(3.11.3) THE ORGANIZATION AND FUNCTIONING OF THE

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CONSTITUTIONAL COMMISSION SHALL BE APPROVED BY THE RC.
THE PRINCIPLES OF THE PROCESS SHALL BE APPROVED BY THE
RC WITHOUT PREJUDICE TO THE POSSIBILITY OF THEIR AMENDMENT
BY THE LEGISLATIVE ASSEMBLY.

(3.12) THE CONSTITUTIONAL COMMISSION SHALL:
(A) OBLIGATORILY REVIEW THE CONSTITUTIONALITY OF MEASURES WHICH
MUST BE REVIEWED BY THE CONSTITUTIONAL COMMISSION UNDER THE
TERMS OF 3.7A AND 3.7C;
(B) OBLIGATORILY REVIEW THE POSSIBILITY OF VIOLATION OF THE
CONSTITUTIONAL PRINCIPLES THROUGH OMISSION UNDER THE TERMS,
AND FOR THE EFFECTS OF, 3.7B;
(C) JUDGE THE QUESTIONS OF UNCONSTITUTIONALITY WHICH ARE SUMMITTED
TO THE COMMISSION UNDER THE TERMS OF 3.10.2 AND 3.10.3.

(3.13) AS GUARANTOR OF FIDELITY TO THE SPIRIT OF THE REVOLUTION,
THE RC SHALL:
(A) TOGETHER WITH THE PRESIDENT, DECLARE ITSELF ON THE SELECTION
OF THE PRIME MINISTER;
(B) DECLARE ITSELF, TOGETHER WITH THE PRESIDENT, ON THE EXERCISE
OF THE RIGHT OF SUSPENSIVE VETO UNDER THE TERMS OF 2.5.

(3.14) AS A POLITICAL AND LEGISLATIVE BODY IN MILITARY MATTERS,
THE RC SHALL HAVE:
(A) EXCLUSIVE COMPETENCE TO PASS LEGISLATION ON ORGANIZATIONS,
FUNCTIONING, AND DISCIPLINE OF THE ARMED FORCES;
(B) COMPETENCE TO APPROVE TREATIES OR INTERNATIONAL ACCORDS
WHICH CONCERN MILITARY MATTERS.

(3.15.1) ACTIONS OF THE RC WHICH CONSTITUTE THE EXERCISE OF
POWERS ASSIGNED IT IN SECTIONS (3.3), (3.11.3), AND (3.14)
SHALL, AS APPROPRIATE, TAKE THE FORM OF LEGISLATIVE ACTIONS
OF THE RC OR SIMPLE ACTIONS OF THE RC, AND SHALL BE PROMULGATED
BY THE PRESIDENT. A MINISTERIAL VOTE SHALL BE NECESSARY IN
ACTIONS INVOLVING INCREASES OR DECREASES IN REVENUES.

(3.15.2) LEGISLATIVE ACTIONS OF THE RC HAVE THE SAME EFFECT
AS LAWS AND DECREE-LAWS. SIMPLE ACTIONS OF THE RC HAVE THE SAME
EFFECT AS REGULATORY DECREES OR ACTS OF THE LEGISLATIVE ASSEMBLY
OR GOVERNMENT IN APPROVING TREATIES OR INTERNATIONAL ACCORDS.
OTHER ACTS OF THE RC SHALL TAKE THE FORM OF RESOLUTIONS AND
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WILL BE PUBLISHED WITHOUT PROMULGATION BY THE PRESIDENT.

-- 4. RELATIONS AMONG THE PRESIDENT, THE LEGISLATIVE ASSEMBLY,
AND THE GOVERNMENT.

(4.1) THE GOVERNMENT IS POLITICALLY RESPONSIBLE TO THE
PRESIDENT AND TO THE LEGISLATIVE ASSEMBLY.

(4.2) THE POLITICAL RESPONSIBILITY OF THE GOVERNMENT BEFORE
THE LEGISLATIVE ASSEMBLY TAKES PLACE THROUGH THE CONSIDERATION
OF THE GOVERNMENT'S PROGRAM, REFUSAL OF CONFIDENCE REQUESTED
BY THE GOVERNMENT, OR THE APPROVAL OF CENSURE MOTIONS IN THE
TERMS TO BE DEFINED BY THE CONSTITUENT ASSEMBLY.

(4.3) IN THE CASE OF THE GOVERNMENT'S RESIGNATION, THE MEMBERS
OF THE DEPARTING GOVERNMENT WILL REMAIN IN OFFICE UNTIL THE
NEW GOVERNMENT TAKES OFFICE.

(4.4) THE PRESIDENT MUST DISSOLVE THE ASSEMBLY WHEN THE
ASSEMBLY HAS DENIED VOTES OF CONFIDENCE OR APPROVED CENSURE
MOTIONS WHICH CAUSE THE THIRD REPLACEMENT OF THE GOVERNMENT
IN THE SAME LEGISLATURE.

-- 5. FINAL AND TRANSITORY DISPOSITIONS

(5.1) THE TERM OF THE FIRST LEGISLATURE SHALL BE FOUR YEARS.

(5.2) THE FIRST MANDATE OF THE PRESIDENT OF THE REPUBLIC
SHALL END THREE MONTHS AFTER THE END OF THE TRANSITION PERIOD
OR FIVE YEARS AFTER HIS ELECTION, WHICHEVER COMES FIRST.

(5.3) EVEN IF THE LEGISLATIVE ASSEMBLY IS DISSOLVED, OR
IF A VACANCY SHOULD OCCUR IN THE PRESIDENCY OF THE REPUBLIC,
A NEW, COMPLETE TERM OF OFFICE WILL NOT BEGIN FOR THE NEW
LEGISLATURE OR PRESIDENT. THOSE NEWLY ELECTED WILL ONLY
COMPLETE THE TERMS OF THEIR PREDECESSORS.

(5.4) THE SECOND LEGISLATURE SHALL HAVE THE POWER TO REVISE
THE CONSTITUTION; THE PRESIDENT MAY NOT REFUSE TO PROMULGATE
THE LAW CONTAINING ANY REVISIONS. THE PERIOD OF TRANSITION
WILL END WHEN THIS LAW ENTERS INTO EFFECT.

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(5.5) THE PRESENT PACT WILL REMAIN IN FORCE FOR A TRANSITION
PERIOD OF AT LEAST FOUR YEARS. THE PACT CANNOT BE REVISED
DURING THIS PERIOD WITHOUT THE AGREEMENT OF THE RC.

(5.6) THE PRESENT PACT REPLACES AND REPEALS THE PREVIOUS PACT
BINDING THE POLITICAL PARTIES TO INCORPORATE ITS PROVISIONS
INTO THE TEXT OF THE CONSTITUTION.

2. TEXT OF LAST-MINUTE AMENDMENT TO PACT, WHICH SPECIFIED
THAT PACT WOULD NOT ENTER INTO FORCE PRIOR TO PRESIDENTIAL
ELECTIONS, HAS NOT YET BEEN PUBLISHED.

3. OFFICIAL PORTUGUESE LANGUAGE TEXT OF PACT POUCHED
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